

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #8	CCRB Case #: 201609591	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/24/2016 8:45 AM, Monday, 10/31/2016	Location of Incident: § 87(2)(b) in Brooklyn	Precinct: 79	18 Mo. SOL 4/24/2018	EO SOL 4/24/2018	
Date/Time CV Reported Fri, 11/18/2016 1:30 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 11/18/2016 1:30 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Thomas Napolitano	3282	940682	WARRSEC
2. SGT Raymond Tomins	05336	902480	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Anthony Giretti	4617	938568	WARRSEC
2. DT3 Joseph Russo	4054	939390	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Thomas Napolitano	Abuse: Detective Thomas Napolitano entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.SGT Raymond Tomins	Abuse: Sergeant Raymond Tomins entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Case Summary

On October 24th, 2016, at approximately 8:45AM, officers came to § 87(2)(b)'s apartment at § 87(2)(b) in Brooklyn. Detective Thomas Napolitano, Sergeant Raymond Tomins, Detective Anthony Giretti, and Detective Joseph Russo, assigned to the Brooklyn North Warrant Squad, arrived at § 87(2)(b)'s apartment to investigate the subject of a parole warrant. Det. Napolitano, Sgt. Tomins, and Det. Giretti entered the apartment to search for the subject of the investigation, while Det. Russo remained outside of the apartment by the door (**Allegation A and Allegation B**). There is no video that captured this incident. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was suitable for mediation and it was offered to § 87(2)(b) during his in-person interview (BR01). § 87(2)(b) chose to have his complaint investigated.
- The NYC Office of the Comptroller responded to a request on February 17th, 2017, indicating that no notice of claim has been filed by § 87(2)(b) in regards to this incident (BR 02).
- § 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the second complaint filed by § 87(2)(b) with the CCRB § 87(2)(b)
- Det. Napolitano has been a member of the service for 11 years, and this is the twelfth CCRB complaint filed against him (BR05). Det. Napolitano has one substantiated allegation against him for use of physical force. This substantiated allegation stems from CCRB Case 2011010420. The NYPD disposed of this allegation as not guilty. The previous 11 cases have generated a total of 24 allegations, two of which are Abuse – Premises entered and/or searched.
- Sgt. Tomins has been a member of the service for 24 years, and this is the 14th CCRB complaint filed against him (BR06). Sgt. Tomins has one substantiated allegation against him for Abuse of Authority –Premises entered and/or searched. This substantiated allegation stems from CCRB case number 201206370. The NYPD disposed of this allegation as not guilty. The previous 13 cases have generated a total of 27 allegations, two of which are Abuse – Premises entered and/or searched.

Findings and Recommendations

Explanation of Subject Officer Identification

- Based on the testimony of the members of service interviewed for this case, Det. Napolitano's investigation, which was supervised by Sgt. Tomins, served as the basis for the entry by all three members of the incident location—Det. Napolitano, Sgt. Tomins, and Det. Giretti. § 87(2)(g)

§ 87(2)(g)

Allegation A – Abuse of Authority: Detective Thomas Napolitano entered and searched § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: Sergeant Raymond Tomins entered and searched § 87(2)(b) in Brooklyn.

It is undisputed that officers entered § 87(2)(b) on the incident date. § 87(2)(b) testified that Det. Napolitano, Sgt. Tomins, Det. Giretti, and Det. Russo arrived at his apartment looking for someone by the name of “§ 87(2)(b) § 87(2)(b) was alone inside his apartment, and had been woken up by Det. Napolitano’s knocking on his door (BR01). § 87(2)(b) opened the door to his apartment a small amount and peeked around the door to see who was there. Det. Napolitano was the primary person speaking with § 87(2)(b) during this incident. Det. Napolitano asked § 87(2)(b) who lived in the apartment. § 87(2)(b) told Det. Napolitano that he and his partner, § 87(2)(b) lived in the apartment. Det. Napolitano asked § 87(2)(b) if a “§ 87(2)(b) lived in the apartment. § 87(2)(b) acknowledged that he sometimes received mail for someone by the name of “§ 87(2)(b) but told Det. Napolitano that no one by the name of “§ 87(2)(b) lived in the apartment. Det. Napolitano went on to say that he had a warrant for “§ 87(2)(b) and showed § 87(2)(b) a warrant with a picture of a black male that had the surname “§ 87(2)(b) on it. Det. Napolitano asked § 87(2)(b) if he had ever seen the man in the picture before, to which § 87(2)(b) responded that he had not.

As Det. Napolitano had been asking him more questions, § 87(2)(b) had opened the door to his apartment a little wider. When Det. Napolitano showed § 87(2)(b) the warrant, § 87(2)(b) noticed that Det. Napolitano had his hand on the door to his apartment, and was in this way keeping the door wide open. § 87(2)(b) also noticed that around the time when Det. Napolitano had shown him the warrant, Det. Napolitano had stepped past the threshold of the doorway down into the apartment with one of his legs. When § 87(2)(b) saw that Det. Napolitano had done this, § 87(2)(b) told Det. Napolitano that he would not answer any more questions until Det. Napolitano took his foot out of § 87(2)(b)’s apartment. Det. Napolitano said “okay,” and brought his foot back up outside of the apartment. However, Det. Napolitano kept his hand on the door even after he took his foot back out the apartment and into the hallway.

Det. Napolitano began to ask more questions, but § 87(2)(b) refused to answer them and instead told Det. Napolitano that he did not feel comfortable answering his questions because Det. Napolitano had not identified who he was, what the visit was for, and because he did not have a warrant. Det. Napolitano’s tone became more aggressive, and Det. Napolitano told § 87(2)(b) that he did not need to show him the warrant and that he would not leave. § 87(2)(b) told Det. Napolitano that he was not comfortable with him being there, and again told Det. Napolitano that he did not have the proper authorization to be there. Det. Napolitano and Det. Giretti provided § 87(2)(b) with their names and badge numbers.

Despite this fact, § 87(2)(b) was afraid because he believed that the officers would forcibly enter his apartment. § 87(2)(b) believed this because Det. Napolitano still had his hand

on the door so that the door could not be closed, Det. Napolitano had said he would not leave, and Det. Napolitano had told him that he had authority to enter his apartment. After about five minutes of speaking with Det. Napolitano, § 87(2)(b) told the officers that he did not want them in his apartment, but that he was going to let them in because he was in fear of his life and felt that he had no other choice. § 87(2)(b) stepped aside while Det. Napolitano, Sgt. Tomins, and Det. Giretti entered his apartment. Det. Russo remained outside of the apartment the entire time. § 87(2)(b) remained near the door while Det. Napolitano, Sgt. Tomins, Det. Giretti entered rooms inside of the apartment.

During his first interview at the CCRB, Det. Napolitano testified that prior to the incident date he had been investigating an active parole warrant under the supervision of Sgt. Tomins (BR07). § 87(2)(b) was one of many addresses that Det. Napolitano found when conducting computer searches for subject of the parole warrant and people whom he might associate with. Det. Napolitano could not recall the name of the subject of the parole warrant, nor could he recall when the search which revealed the § 87(2)(b) address as a location where the subject of the parole warrant might be hiding occurred. Det. Napolitano stated that although he could not recall these details, these investigative steps would be memorialized in ADW, the computer system that warrant squad uses to document investigative steps. Det. Napolitano believed that he must have reviewed some records from the Department of Corrections which led him to believe that a female who had been listed on paperwork of the subject of the parole warrant might be living at the § 87(2)(b) address. Det. Napolitano could not recall the precise association that the female had with the subject of the parole warrant, but believed it to be something of the nature of either a girlfriend or a female relative. Det. Napolitano did not have any other reason to believe that the female listed on the paperwork of the subject of the parole warrant was in some way associated with him other than the fact that at some point in time, which Det. Napolitano could not recall, the female had been listed in some capacity on some paperwork of the subject of the parole warrant. Det. Napolitano could not recall doing any other work in order to determine whether or not the subject of the parole warrant might be at the § 87(2)(b) address.

On the incident date, Det. Napolitano went with Sgt. Tomins, Det. Giretti, and Det. Russo to the § 87(2)(b) address in order to investigate whether or not the subject of the parole warrant would be at the apartment. Det. Napolitano was the member of service who was primarily speaking with § 87(2)(b). Det. Napolitano explained to § 87(2)(b) that he was from the police department and told § 87(2)(b) that he was there to investigate the subject of the parole warrant. Det. Napolitano showed § 87(2)(b) the warrant. Det. Napolitano began to ask § 87(2)(b) questions in order to determine whether or not the subject of the parole warrant might be at the apartment. From the beginning of his interaction with § 87(2)(b) Det. Napolitano could tell that § 87(2)(b) was uncomfortable because his answers to his questions were short. Det. Napolitano could not provide any further justification as to how he could tell that § 87(2)(b) was uncomfortable. Det. Napolitano showed § 87(2)(b) the warrant. As Det. Napolitano further explained why he was there and asked § 87(2)(b) more questions, Det. Napolitano perceived § 87(2)(b) to be more at ease because § 87(2)(b) began to answer his questions in greater detail.

Det. Napolitano could not remember the exact answers that § 87(2)(b) provided to his questions, but did remember that he came to the conclusion that it was worth it to enter the apartment and search it for the subject of the parole warrant. Det. Napolitano asked § 87(2)(b) if he could enter the apartment and take a look around. Det. Napolitano could not remember how he

asked this, nor could he remember in what way § 87(2)(b) responded to this request. Det. Napolitano could remember that § 87(2)(b) in some way indicated that he and the other members of service could enter the apartment.

Before § 87(2)(b) indicated to Det. Napolitano that he could enter the apartment, Det. Napolitano did not step on or past the threshold of the door before § 87(2)(b) invited him inside the apartment. Det. Napolitano did not place his hand on the door while he was speaking with the occupant of the apartment. § 87(2)(b) led Det. Napolitano, Sgt. Tomins, and Det. Giretti through the apartment. After failing to find the subject of the parole warrant in the apartment, Det. Napolitano shook hands with § 87(2)(b) and left the scene.

Det. Napolitano testified that even if the occupant of the apartment of a third party in relation to the subject of the parole warrant did not give him permission to enter the apartment, he could still enter the apartment because the apartment was that of a third party in relation to the subject of the parole warrant, even if the door of the apartment had been closed. Det. Napolitano specified that he requested § 87(2)(b)'s permission to enter the apartment because he was being cordial.

Det. Napolitano was interviewed for a second time at the CCRB because based on the information that he and the other officers provided, Inv. Ridge was unable to obtain a copy of the parole warrant. Document request receipts from the Brooklyn North Warrant Squad read "N/A" or "None" in regards to requests for the warrant investigative data associated with the address and for any warrant for that address (BR08). During his second interview at the CCRB, Det. Napolitano was unable to provide many specifics regarding his investigation because he had not reviewed the case prior to his second appearance at the CCRB (BR09). Several days before the interview, Inv. Ridge placed a call to Det. Napolitano, requesting he bring any paperwork regarding the investigation, including a copy of the parole warrant, if possible. Det. Napolitano stated that he did not have access to the parole warrant, and was not allowed to bring paperwork regarding the investigation with him to the CCRB.

During his interview at the CCRB, Sgt. Tomins specified that the subject of the parole warrant had listed the female whose address had at some point been the § 87(2)(b) address as an emergency contact (BR10). Sgt. Tomins' testimony of the visit to the § 87(2)(b) address was essentially consistent with that provided by Det. Napolitano. Sgt. Tomins testified that at first, § 87(2)(b) appeared standoffish and angry. Sgt. Tomins could provide no other justification as to how he could tell that § 87(2)(b) was standoffish and angry other than the fact that he asked Det. Napolitano why he was there. Sgt. Tomins could not remember what § 87(2)(b)'s demeanor was like as events progressed, but did remember that § 87(2)(b) became more friendly. Sgt. Tomins cited the fact that Det. Napolitano and § 87(2)(b) shook hands as he left the apartment, but provided no other description of § 87(2)(b)'s behavior to indicate that he became more friendly as time passed.

Sgt. Tomins testified that the fact that § 87(2)(b) seemed standoffish and angry, coupled with the fact that from the outside the apartment appeared to have several rooms where the subject of the parole warrant could be hiding led Sgt. Tomins to believe that the subject of the parole warrant might be hiding in the apartment. Sgt. Tomins could not provide any additional reasons for why he believed the subject of the parole warrant might be hiding in the apartment.

Sgt. Tomins could not recall if he or anyone else told § 87(2)(b) that they would not leave. Sgt. Tomins could not recall if Det. Napolitano ever used his hand to keep the door to the apartment open while he was speaking with § 87(2)(b). Sgt. Tomins also could not recall if Det. Napolitano ever entered the apartment before § 87(2)(b) told him that he could come inside. The

remainder of Sgt. Tomins' account was essentially consistent with that provided by Det. Napolitano.

Sgt. Tomins was also interviewed for a second time at the CCRB, following Det. Napolitano's second interview. In response to a call from Inv. Ridge requesting that Sgt. Tomins bring the materials that Det. Napolitano had not brought to his second interview at the CCRB, Sgt. Tomins brought along the investigative data for the parole warrant (BR11). The investigative data indicated that an Accurant check conducted in August 2016, revealed the § 87(2)(b) address as an additional address for § 87(2)(b) aunt, § 87(2)(b) (BR12). In August, 2016, Det. Toscano, the detective originally assigned to the case, spoke with § 87(2)(b)'s parole officer, who had spoken with § 87(2)(b) and learned that she was currently living at another address which was not the § 87(2)(b) address.

During his interview at the CCRB, Det. Giretti testified that § 87(2)(b) spoke in a calm manner with Det. Napolitano (BR13). Det. Giretti could tell that § 87(2)(b) was speaking in a calm manner because he was using a "normal" tone of voice that was not at any point raised. Det. Giretti could not recall the specifics of the conversation. Det. Giretti could not recall if Det. Napolitano ever put his hand on the door or if Det. Napolitano crossed the threshold of the doorway to the apartment before § 87(2)(b) allowed him to enter. The remainder of Det. Giretti's account was essentially consistent with that provided by the other members of service.

During his interview at the CCRB, Det. Russo testified that when § 87(2)(b) first answered the door, he appeared confused about why the officers were there (BR14). Det. Russo could not recall if Det. Napolitano ever put his hand on the door or if Det. Napolitano crossed the threshold of the doorway to the apartment before § 87(2)(b) allowed him to enter. Det. Russo testified that throughout the course of the incident, he remained just outside of the door of the apartment in hallway, as this is standard procedure for one of the officers to remain outside of the apartment at the door during a search. Det. Russo never heard § 87(2)(b) tell the officers to leave at any point. The remainder of Det. Giretti's account was essentially consistent with that provided by the other members of service.

During his interview at the CCRB, Det. Viar testified he remained outside in the car that Sgt. Tomins' team arrived in throughout course of the incident because he had made an arrest earlier that day (BR15).

On March, 1st, 2017, Inv. Ridge received an e-mail from the New York State Department of Corrections and Community Supervision, which contained a copy of a valid parole warrant for "§ 87(2)(b)," and which was dated July 20th, 2016 (BR16).

In Payton v. New York 445 U.S. 573 (1979), the Fourth Amendment was interpreted as prohibiting the warrantless and nonconsensual entry into a suspect's home to conduct an arrest, absent exigent circumstances (BR17). Payton v. New York goes on to state that an arrest warrant "carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within."

People v. Gonzalez, 39 NY 2d 122 (1976) states that "consent to search must be an unequivocal product of an essentially free and unconstrained choice and is incompatible with official coercion and pressure (BR18)."

§ 87(2)(g)

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